

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Ole SIBBESEN *et al.*

*Filed via EFS Web
February 9, 2010*

Title: BACTERIAL XYLANASES

Appl. No.: 10/626,583

Filing Date: July 25, 2003

Examiner: Ganapathiram RAGHU

Art Unit: 1652

Confirmation 9539
Number:

**RESPONSE TO COMMUNICATION REGARDING APPEAL -
DEFECTIVE APPEAL BRIEF**

Mail Stop **Appeal Brief - Patents**
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Communication Regarding Appeal mailed January 28, 2010 in reference to the Appeal Brief filed May 27, 2009 in the captioned application, Applicants submit an amended "Summary of Claimed Subject Matter" section of the Appeal Brief pursuant to 37 C.F.R. § 41.37(c)(1)(v). Specifically, support for independent claims 56 and 60, and dependent claims 57-59, 61-67, 69 and 70, which are the subject of the Appeal, are mapped to the Specification as filed and not to the U.S. Patent Application Publication.

It is believed that all issues raised in the Communication Regarding Appeal of January 28, 2010, have been addressed. Since the Office's objections to the Appeal Brief filed May 27, 2009 were based solely on an alleged deficiency in the "Summary of Claimed

Subject Matter," an entire Amended Appeal Brief is not being filed in accordance with MPEP § 1205.03. However, should the Office wish to have a complete amended Appeal Brief, Appellants will gladly cooperate and supply a complete amended Appeal Brief.

Appellants have previously paid the 37 C.F.R. § 41.20(b)(2) appeal fee. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 19-0741.

Respectfully submitted,

Date February 9, 2010

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5538
Facsimile: (202) 672-5399

By

Julie Hilde
for
Michele M. Simkin
Attorney for Appellants
Registration No. 34,717

Reg # 94161

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 56 and 60 are the sole independent claims on appeal. Claim 56 is directed to a bakery product or dough for making a bakery product, suitable for use in a foodstuff, comprising a polypeptide which is expressed from the nucleotide sequence of SEQ ID NO:6. The polypeptide encoded by SEQ ID NO:6 is a bacterial xylanase isolated from *Bacillus subtilis*. Exemplary support for claim 56 can be found in the Specification at page 19, ll. 11-16, page 19, ll. 26-28, page 21, line 15 – page 22, line 21, and the sequence listing which was filed as part of the Specification on July 25, 2003.

Claim 60 is directed to a dough for making a bakery product prepared by incorporating the bacterial xylanase expressed from the nucleotide sequence of SEQ ID NO:6, in which the resultant dough is less sticky than an otherwise identical dough prepared by incorporating a fungal xylanase instead of a bacterial xylanase. Support for claim 60 can be found in originally filed claims 44 and 48, as well as the Specification at page 19, ll. 11-16, page 19, ll. 26-28, page 21, line 15 – page 22, line 21, and the sequence listing which was filed as part of the Specification on July 25, 2003.

Claims 57-59 all depend directly or indirectly from claim 56 and recite further features of the polypeptide expressed from the nucleotide sequence of SEQ ID NO:6 such as the polypeptide does not contain a leader sequence or has the amino acid sequence of SEQ ID NO:5 or amino acids 29-213 of SEQ ID NO:5. Exemplary support for claims 57-59 can be found in the originally filed claims and in the Specification at page 25, ll. 14-25.

Claims 61-67 and 69-70 all depend directly or indirectly from claim 60 and recite further features of the polypeptide expressed from the nucleotide sequence of SEQ ID NO:6 (*i.e.*, the polypeptide does not contain a leader sequence or has the amino acid sequence of SEQ ID NO:5 or amino acids 29-213 of SEQ ID NO:5); or further features of the dough itself (*i.e.*, comprising wheat flour and water or yeast) or further features of the bacterial xylanase, *e.g.*, that it is free of detrimental levels of glucanase enzymes or from a *Bacillus subtilis* strain, or are directed to the bakery product prepared by baking the dough of claims 60 or 69,

respectively. Exemplary support for claims 61-67 and 69-70 can be found in the originally filed claims and in the Specification at page 25, ll. 14-25.